IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

ST.Rev..No. 156 of 2003

(ORDER DATED 30-11-2002 IN T.A.NO.365/2002 OF KERALA SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM)

PETITIONER:

M/S. SURYA STONEWARE PIPES PVT. LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR K.M.SHAMSUDDIN,
NEDUNGOLAM,
KOLLAM DISTRICT.

BY ADV. SRI.P.BALACHANDRAN

RESPONDENT:

STATE OF KERALA.

BY SR. GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 22/10/2007, ALONG WITH STRV NOS.172/2003 & 173 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.Nos.156 of o2003, 172 of 2003 & 173 of 2003

Dated this the 22nd day of October, 2007.

O R D E R

H.L.Dattu, C.J.

In all these revision petitions, a common question of law would arise for our consideration and decision. Therefore, all these revision petitions are clubbed, heard and disposed of by this common order.

(2). The petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act and Central Sales Tax Act.

(3). In these tax revision cases, we are concerned with the assessment years 1991-92, 1992-93 and 1993-94.

(4). The assessee is a small scale industrial unit registered with the Industries Centre, Kollam. It is engaged in the manufacturing of salt glaced stoneware pipes, refractories, wirecut bricks and allied clay products.

(5). For the afore-said assessment years, the petitioner had claimed exemption from payment of purchase tax, in view of the Notification issued by the State Government in S.R.O.No.499/90. Initially, the assessing authority had granted the exemption claimed by the petitioner from payment of purchase tax.

(6). The Deputy Commissioner of Commercial Taxes exercising his suo motu revisional powers has set aside the order of assessment passed by the assessing authority and thereafter had remanded the matter to the

assessing authority to redo the matter in accordance with law. The assessing authority has passed a fresh assessment order denying the claim made by the assessee from payment of purchase tax. Aggrieved by said order, the assessee had unsuccessfully carried the matter before the first appellate authority and the Tribunal.

(7). Being aggrieved by the orders so passed by the Tribunal, the assessee is before us in these tax revision cases.

(8). The assessee has framed the following questions of law for our consideration and decision:

> *"(i). Whether on the facts and in the circumstances of the case, and also in view of Annexure.A proceedings is not the petitioner entitled to exemption under section 5A of the Act on the purchase turnover of goods used for the manufacture of products?*
>
> *(ii). Whether there were materials for the appellate tribunal to come to the conclusion that the raw materials purchased and used for the manufacture of goods are not entitled for exemption under SRO 499/90?*
>
> *(iii). Whether on the facts and in the circumstances of the case, the appellate tribunal was justified in holding that the petitioner cannot plead estoppel in view of Annexure.A read with SRO.499/90?*

(9). In the instant case, admittedly, the Notification SRO.No.499/90 grants exemption in respect of the goods taxable at the last purchase point. The petitioner is engaged in the manufacturing of salt glaced stoneware pipes, refractories, wirecut bricks and allied clay products. The raw materials used by the petitioner are clay and firewood taxable at the first sale point. Therefore, they would not be entitled to have the benefit of the afore-said Notification.

(10). The issue in this regard is squarely covered by the decision of the Apex Court in the case of **State of Kerala Vs. Vattukalam Chemicals Industries [(2001) 124 STC 233]**. In the said judgment, the Supreme Court after noticing the Notification S.R.O.No.499/90, has stated as under:

> ***"4.*** *The respondent-assessee purchased copper scrap for use in the manufacture of copper sulphate. It is an admitted position that copper scrap is not taxable at the point of last purchase in the State. On the plain words of the notification, the exemption given thereby is, therefore, not available to copper scrap and, therefore, to the particular copper scrap purchased by the assessee."*

(11). The facts in the instant case are identical with the facts stated by the Apex Court in ***State of Kerala Vs. Vattukalam Chemicals Industries [(2001) 124 STC 233]***. Therefore, following the principles laid down in the afore-said decision, the questions of law framed by the assessee requires to be

answered in the negative and in favour of the Revenue. Accordingly, we pass the following:

O R D E R

(i). The Sales Tax Revision Petitions filed by the assessee for the assessment years 1991-92, 1992-93 and 1993-94 are rejected.

(ii). The questions of law framed by the assessee is answered in the negative and in favour of the Revenue.

(12). In view of the order passed in the revision petitions, all pending interlocutory applications are dismissed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS